

GRANTS AND COOPERATIVE AGREEMENTS

RECLAMATION FINANCIAL ASSISTANCE HANDBOOK

U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION
ACQUISITION AND ASSISTANCE MANAGEMENT SERVICES

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CONTENTS

	<u>Page No.</u>
I. BACKGROUND	
A. Purpose	1
B. Reclamation Financial Assistance Authority	1
II. STATEMENT OF POLICY	
A. Determination of Appropriate Bureau Instrument	3
B. Delegation of Authority	3
III. SCOPE OF APPLICATION	
A. Identification of Specific Programs	4
B. Other Programs	6
IV. PROCEDURES	
A. Regulations and Guidance	7
B. Delegation of Authority	9
C. Administrative Requirements	11
1. Application for Federal Assistance	11
2. Written Determination	11
3. Numbering System	11
4. Competition Requirement	12
5. Noncompetitive Agreements	12
6. Synopsis	13
7. Competitive Solicitations	13
8. Catalog of Federal Domestic Assistance	14
9. Intergovernmental Review of Federal Programs	15
10. Business Evaluation	15
11. Responsibility Determination	15
12. Format	16
13. Term of Agreement	17
14. Independent Review	17
15. Legal Review	18
16. Approvals	18
17. Reporting Requirements	19
18. Certifications	19
19. Payments	21
20. Audit Requirements	21
21. Minority Business Enterprise Development	22
22. Property	22
23. Modifications to Agreements	23
24. Resolving Disagreements	23
25. Nondiscrimination on the Basis of Handicap	23

26.	Metric Transition Program	23
27.	Stevens Amendment	23
28.	Endorsement of Commercial Products or Services	24
29.	Buy American Act	24
30.	Closeout	24
31.	Simplified Procedures for Small Grants	24
32.	Cooperative Research and Development Agreements	25
33.	Forms	26
34.	Clauses	26
V.	GLOSSARY OF TERMS	27-31

I. BACKGROUND

A. PURPOSE

1. The purpose of this Handbook is to promote the effective and consistent use of grants and cooperative agreements to enhance accomplishment of Bureau of Reclamation programs. Specifically, the Reclamation Act of 1902 provides that the Secretary of the Interior is authorized to perform any and all acts, and to make such rules and regulations as may be necessary and proper, for the purpose of carrying the provisions of the Act into full force and effect (32 Stat. 308; 43 U.S.C. 391).

2. Money and services should be transferred by the Federal Government by means of (a) acquisition instruments (e.g., contracts, purchase orders and interagency agreements) which are covered by the Federal Acquisition Regulations (FAR), the Department of the Interior Acquisition Regulation (DIAR), and the Reclamation Acquisition Regulation System (RARS), (b) financial assistance instruments (i.e., grants, cooperative agreements and loans) of which grants and cooperative agreements are the subject of this directive, (c) repayment contracts authorized under 43 U.S.C. 485, et seq., (d) relocation contracts authorized under the Reclamation Act of 1902, as amended and supplemented, and Section 208 of the Flood Control Act of 1962 (33 U.S.C. 701r-1 and 43 U.S.C. 389), and (e) cooperative research and development agreements initiated by Government-operated laboratories and authorized under the Federal Technology Transfer Act of 1986 (Pub.L. 99-502). Memoranda of Understanding, Memoranda of Agreement, and other such instruments, should be used only when the Government is not transferring something of value (i.e., money or services). These instruments may be appropriate, however, when something of value is being received by Reclamation from another source.

3. This Handbook:

a. Establishes the authority for the use of grants and cooperative agreements;

b. Identifies programs under which Reclamation has authority for the use of grants and cooperative agreements as defined in Pub.L. 95-224 (recodified as Pub.L. 97-258: 31 U.S.C. 6301 and 31 U.S.C. 6302); and

c. Describes procedures for ensuring uniform use of grants and cooperative agreements within Reclamation.

4. Regional offices may issue supplements to this Handbook. A copy of any proposed supplement will be forwarded to D-7800 for review prior to issuance.

B. RECLAMATION FINANCIAL ASSISTANCE AUTHORITY

1. The Bureau of Reclamation provides assistance to State and local governments and subentities (including Indian Tribes); colleges and universities; nonprofit organizations; and, in some instances, commercial organizations. The authority for this assistance is normally the Reclamation Act of 1902, as amended and supplemented.

2. Further, 255 DM 1 provides the Secretary's delegation of authority to the Commissioner to perform the functions and exercise the authority vested in the Secretary of the Interior. Certain limitations are applied, none of which deal with determination of the proper business instrument for execution of the Reclamation program.

3. The Federal Grant and Cooperative Agreement Act of 1977 (Pub.L. 95-224, subsequently recodified as Chapter 63 of Pub.L. 97-258 (31 U.S.C. 6301 et seq.)), directs Federal agencies to provide uniformity in the use of business instruments under two basic categories, (a) acquisition and (b) financial assistance, as defined therein.

4. Historically, the Office of Management and Budget (OMB) provided guidance on the implementation of the Federal Grant and Cooperative Agreement Act of 1977, Pub.L. 95-224 (recodified in Pub.L. 97-258) as published in the Federal Register, Vol. 43, No. 161, dated August 18, 1978, which states that:

a. If, prior to the passage of the Act, an agency was authorized to use one or more of these instruments (i.e., contracts, grants, and cooperative agreements) - and is not prohibited from using any of them - this provision enables it to enter into any of the three types of instruments.

b. Congress intended the Act to allow agencies flexibility to select the instrument that would best suit each transaction. Agencies should ensure that all transactions covered by the Act are consistent with their basic policy decision for each program.

II. STATEMENT OF POLICY

A. DETERMINATION OF APPROPRIATE BUREAU INSTRUMENT

1. In performance of the program of water development authorized by the Reclamation Act of 1902, a grant or a cooperative agreement shall be used when, in accordance with the definition set forth in Pub.L. 95-224 (see I.A.3.b above), the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute (31 U.S.C. 6304(1)).

2. If a financial assistance instrument is appropriate, a cooperative agreement shall be selected when substantial involvement is anticipated between the executive agency and the recipient during performance (31 U.S.C. 6305(2)). However, a grant shall be selected when no substantial involvement is anticipated between the executive agency and the recipient during performance (31 U.S.C. 6304(2)).

B. DELEGATION OF AUTHORITY

The Regional Directors and the Director, Management Services Office, have been delegated the authority to serve as Grants and Cooperative Agreements Officers with authority to redelegate. Other than this redelegation, however, no further redelegation is permitted. Regional Directors may wish to redelegate the authority only to warranted contracting officers in accordance with Regional delegation authority contained in the Reclamation Manual.

III. SCOPE OF APPLICATION

A. IDENTIFICATION OF SPECIFIC PROGRAMS

The following programs are identified as Bureau activities under which there is authority to use financial assistance instruments (i.e., grants and cooperative agreements), when appropriate, as defined by Pub.L. 97-258 (see I.B.4 above).

1. Fish hatcheries and wildlife enhancement facilities under Pub.L. 89-72, Federal Water Project Recreation Act (16 U.S.C. 4601-5, 16 U.S.C. 4601-12, et seq.), if the project is to investigate, plan, design, construct, operate, maintain or otherwise provide for fish and wildlife enhancement facilities.
2. Implementation of fish and wildlife management program under the Trinity River Basin, California, Fish and Wildlife, Pub.L. 98-541 (98 Stat. 2721), designed to restore the fish and wildlife populations of the basin to the levels existing before the start of construction of the Trinity River division of the Central Valley Project.
3. Recreation facilities under Pub.L. 95-589, Land and Water Conservation Fund of 1965 (16 U.S.C., 4601-11), as amended, through Pub.L. 96-344 (16 U.S.C., 4601-6a) and Pub.L. 89-72 as cited above, if the project is to investigate, plan, design, construct, operate, maintain, or otherwise provide for public outdoor recreation facilities.
4. Relocation of power lines, gas lines, roads, utilities and bridges under Pub.L. 87-874, Flood Control Act of 1962 which amends the Flood Control Act of 1960 (33 U.S.C. 701r-1), and Pub.L. 76-260 (43 U.S.C. 389).
5. Investigation of cultural resources, including wildlife mitigation under the Fish and Wildlife Coordination Act of 1934 as amended, including Pub.L. 85-624 (16 U.S.C. 661 et seq.) and the Small Reclamation Projects Act of 1956 amendment (43 U.S.C. 422), and historic preservation under Pub.L. 93-291 which amends Pub.L. 86-523 (16 U.S.C. 469). The National Historic Preservation Act of 1966, Pub.L. 89-665, as amended, provides authority in some cases for grants to States for historic preservation projects with regard to properties listed on the National Register; and to Indian tribes and nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage (compliance with restrictions contained in section 102 of the public law is required).
6. Law enforcement on Bureau projects in conjunction with local enforcement agencies, under Pub.L. 98-552 Water Law Enforcement (42 U.S.C. 1962 et seq.).
7. Safety of dams under Pub.L. 95-578, the Reclamation Safety of Dams Act of 1978 as amended August 28, 1984, Pub.L. 98-404 (43 U.S.C. 506).
8. Work on Indian Reservations or for the benefit of Indians (because of their status as Indians), under the Indian Self-Determination and Education Assistance Act (88 Stat. 2203), Pub.L. 93-638, as amended by Pub.L. 100-472.

9. Planning, designing, constructing, operating, maintaining, and replacing the Oglala Sioux Rural Water Supply System, under Pub.L. 100-516, Mni Wiconi Rural Water Supply Project.

10. Conferences are authorized under specific program legislation and under the General Investigations section of the annual appropriations act.

11. Agreements to (A) instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources; (B) encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and (C) promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources in accordance with the Take Pride in America Program (16 U.S.C. 66, sec. 4601).

12. Research is authorized under annual appropriation acts and specific program legislation, including the following:

a. Saline water research programs under the Saline Water Conversion Act of 1971 (which amends the Water Resources Research Act of 1964, Pub.L. 95-89, 91 Stat. 400), and the Colorado River Basin Salinity Control Act, Pub.L. 93-320 (43 U.S.C. 1591 et seq.), as amended by Pub.L. 104-20.

b. Soil and Water Conservation program under the National Parks and Recreation Act of 1978, Pub.L. 95-625 (92 Stat. 3467).

c. Soil and Moisture Conservation program under Soil and Moisture Conservation Act of 1935, Pub.L. 74-46 (16 U.S.C. 590). This public law authorizes research as well as assistance in carrying out preventive measures.

13. Study of the potential for groundwater recharge in the 17 western States under the High Plains States Groundwater Demonstration Program Act of 1983, Pub.L. 98-434 (43 U.S.C. 390g), as amended by Pub.L. 102-575; and program to investigate reclamation and reuse of wastewater and groundwater under the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h to 390h-15).

14. Work on the Garrison Diversion Unit in cooperation with the State of North Dakota is authorized under the Garrison Diversion Unit, Missouri River Basin Project Act of August 15, 1965 (70 Stat. 433), Pub.L. 89-108 and 98-360, Section 207, and Pub.L. 99-294 (100 Stat. 418), the Garrison Diversion Unit Reformulation Act of 1986.

15. Agreements with State and local agencies to resolve water resource issues in concert with conservation of endangered species (not to exceed 75 percent of the estimated program costs) is authorized under Pub.L. 93-205 entitled "Endangered Species Act of 1973," to the extent that funds are appropriated.

16. Wetlands conservation projects under the North American Wetlands Conservation Act (Pub.L. 101-233).

17. Small Reclamation projects which are not determined to be loans under Pub.L. 84-984, Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422).

18. Operation and management of irrigation facilities is authorized under special circumstances under the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391), Section 5 of the Act of August 13, 1914 (43 U.S.C. 499) and the acts amendatory thereof or supplementary thereto, collectively referred to as the Federal Reclamation Law, including the Reclamation Project Act of 1939, Pub.L. 76-260 (43 U.S.C. 485). Because it is important that any action in this category conforms with the intent of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), all proposed grants and cooperative agreements for O&M of irrigation facilities shall be submitted for prior approval of the Director of Operations (code W-6000).

19. Emergency drought relief to the Reclamation States and for other purposes as applicable under the Reclamation States Emergency Drought Relief Act of 1991, Pub.L. 102-250.

20. Protection of timber owned by the United States from fire, disease, or insect ravages (when applicable and when appropriations are authorized) under 16 U.S.C. 594.

21. Investigations, surveys and studies of the water resources and requirements of the entire American River Watershed and the areas serviceable therefrom, as authorized by the American River Basin Development Act, Pub.L. 81-356.

22. Construction and operation of drainage facilities designed to serve the area of which the lands to be served by the San Luis Unit are a part, authorized under the Central Valley Projects Act - San Luis Unit, Pub.L. 86-488.

23. Planning, environmental compliance, design, and construction of the Tongue River Dam Project in cooperation with the State of Montana, as authorized by the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Pub.L. 102-894.

24. Management of undesirable plant species on Federal lands in coordination with State agencies is authorized by Sec. 1453 of Pub.L. 101-624, Amendment to the Noxious Weed Act (104 STAT 3611).

25. Assistance actions as authorized under various titles of the Reclamation Projects Authorization and Adjustment Act, Pub.L. 102-575.

B. OTHER PROGRAMS

Programs not identified in Section A above may be submitted to the Manager, Acquisition and Assistance Management Services, Attention: Code D-7800 for a determination of Federal financial assistance applicability.

IV. PROCEDURES

A. REGULATIONS AND GUIDANCE

1. The regulations and guidance issued by the Department currently known to affect the award and administration of grants and cooperative agreements are as follows:

a. Departmental Manual

- (i) 505 DM 1 (#3079, 8-7-96) - Policy Development and Management.
- (ii) 505 DM 2 (#3080, 8-7-96) - Using Procurement Contracts, Grant Agreements, and Cooperative Agreements.
- (iii) 505 DM 3 (#3029, 12-22-94) - Grants and Cooperative Agreements with State and Local Governments.
- (iv) 505 DM 4 (#3081, 8-7-96) - Deposit of Publications Produced Under Grants.
- (v) 505 DM 5 (#3082, 8-7-96) - Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.
- (vi) 506 DM 1 thru 5 (#1636, 5-10-74) - Equal Opportunity Under Title VI.
- (vii) 507 DM 1 (#3083, 8-7-96) - Catalog of Federal Domestic Assistance.
- (viii) 511 DM 1 thru 6 (#1895, 6-18-76) - Coordination with State and Local Government.

b. Regulations

- (i) 43 CFR 12, Subpart A - Administrative and Audit Requirements and Cost Principles for Assistance Programs
- (ii) 43 CFR 12, Subpart B - Audit Requirements for State and Local Governments
- (iii) 43 CFR 12, Subpart C - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- (iv) 43 CFR 12, Subpart D - Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
- (v) 43 CFR 12, Subpart E - Buy American Requirements for Assistance Programs
- (vi) 43 CFR 12, Subpart F - Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

(vii) 43 CFR 17, Nondiscrimination in Federally-Assisted Programs of the Department of the Interior

2. The following releases in the Reclamation Manual affect financial assistance:

- a. ACM 01-01 - Grants and Cooperative Agreements
- b. LND TRMR-5 - Land Management.

3. Applicable OMB Circulars

a. All OMB circulars, with date of latest revision, applicable to grants and cooperative agreements as set forth below, will be incorporated by reference into all Reclamation grants and cooperative agreements awarded, to ensure adequate coverage of the administrative regulations and cost principles for all levels of financial assistance awards.

(i) When the recipient of a grant or cooperative agreement is a State or local government, including an Indian tribal government, the applicable requirements are set forth in OMB Circular A-102 Revised, "Grants and Cooperative Agreements With State and Local Governments," and the Grants Management Common Rule. Applicable costs will be determined in accordance with OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." The audit requirements are contained in OMB Circular A-128, "Audits of State and Local Governments." Public hospitals and public colleges and universities may be excluded from State and local audits. However, if they are excluded, audits of these entities will be made in accordance with statutory requirements for grants to universities, hospitals, and other nonprofit organizations.

(ii) When the recipient is an institution of higher education, a hospital, or other nonprofit organization, the applicable requirements are set forth in OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." Standards for financial management systems for any of these recipients are contained in Attachment F thereto. In awards to institutions of higher education, applicable costs will be determined in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions." When the recipient is a nonprofit organization, applicable costs will be determined in accordance with OMB Circular A-122 Revised, "Cost Principles for Nonprofit Organizations." The audit requirements are contained in OMB Circular A-133.

(iii) When the recipient is a commercial organization, the basic principles of OMB Circular A-110 will be incorporated into the award to the extent applicable, however, cost principles will be in accordance with Part 31 of the Federal Acquisition Regulation (FAR), Subpart 31.2 entitled, "Contracts with Commercial Organizations."

b. All grants and cooperative agreements awarded by Reclamation will provide for an appropriate flow-down of the requirements of the applicable OMB Circular(s) and Section 12.76, Procurement, of 43 CFR Part 12, in all subgrants, subagreements or contracts awarded thereunder. The administrative requirements and cost principles applicable to the subrecipient or contractor depend on the subrecipient, and not the prime recipient, and may, therefore, differ from the

cost principles and administrative requirements applicable to the prime recipient (e.g., OMB Circulars A-102 and A-87 apply to an award to a local government, while OMB Circulars A-110 and A-122 apply to a subsequent award of a subgrant or cost-reimbursable contract to a nonprofit organization by the recipient).

c. Revised Title 31 U.S.C. 6301-6308 (referred to as "the Act") provides for the Director of the Office of Management and Budget to exempt individual transactions or programs from the Act (see I.B.3 above). Requests for approval for any deviations from the above requirements regarding use of OMB circulars may be directed to the Manager, Acquisition and Assistance Management Services, Attention: Code D-7800.

d. Other OMB Circulars and Issuances

(i) OMB Circular A-89 (Catalog of Federal Domestic Assistance).

(ii) OMB Implementation of the Federal Grant and Cooperative Agreement Act of 1977, OMB Final Guidance, published in 43 Federal Register 161 (August 18, 1978).

(iii) OMB Circular A-123 (Internal Controls).

(iv) OMB Circular A-129 (Managing Federal Credit Programs)

(v) Executive Order 12372 dated July 14, 1982 (Intergovernmental Review of Federal Programs)

B. DELEGATION OF AUTHORITY

1. In accordance with Reclamation Manual (RM) ACM 01-01, paragraph 3, the Commissioner is authorized to exercise all of the authority (subject to specific limitations) vested in the Secretary and delegated to the Assistant Secretary - Water and Science (reference: 209 DM 7.1 and 7.2, 255 DM 1.1 and 255 DM 3.1).

2. As discussed under II.B above, the following are designated as Grants and Cooperative Agreements Officers and are delegated the authority to enter into and administer grants and/or cooperative agreements, subject to the prior approval requirements set forth in RM ACM 01-01, when applicable:

a. Regional Directors, within designated jurisdictions.

b. Director, Management Services Office.

3. This authority may be redelegated in writing to individuals (not positions) to function as Grants Officers and/or Cooperative Agreements Officers, with full power to sign and administer grants and/or cooperative agreements, subject to the prior approval requirements set forth in IV.C below, as applicable. The redelegation should be made to the lowest level in the organization "at which competence can be made available to deal with matters on a local level." (See 200 DM 2.1.)

4. Further redelegation of this authority is prohibited.

5. The Director, Management Services Office, will be responsible for all designations of Grants and/or Cooperative Agreements Officers within the Reclamation Service Center.

6. A copy of each delegation will be sent to Acquisition and Assistance Management Services, Code D-7800.

7. In accordance with RM ACM 01-01, subparagraph 3.D, the following training requirements will be met by persons delegated the authority by the Regional Directors and Director, Management Services Office:

a. Any person delegated the authority of a Grants Officer and/or a Cooperative Agreements Officer will have successfully completed at least 24 hours of training applicable to grants and cooperative agreements. Required training will be completed as soon as practicable, but in no event later than 1 year from the date of receipt of the authority.

b. Subsequent to the initial period of appointment identified in IV.B.7.a above, 24 hours of training courses related to the review process and award and administration of financial assistance agreements will be completed during each 3-year period of signatory authority.

c. If the training requirements have not been met within the established period of time, the authority is automatically canceled.

8. The following limitations are hereby established on the authority of Grants and/or Cooperative Agreements Officers to enter into grants and cooperative agreements:

a. All actions shall meet the requirements set forth in IV.C herein.

b. All of the review and approval procedures set forth in IV.C.14, 15, and 16 below shall be met prior to award.

c. Any deviations to the requirements of RM ACM 01-01 will be submitted for approval to the Manager, Acquisition and Assistance Management Services (D-7800).

C. ADMINISTRATIVE REQUIREMENTS

1. Applications for Federal Assistance

An application for Federal assistance programs must be received prior to entering into a cooperative agreement or making a grant. The application form varies depending on whether the application is for construction or non-construction funds. For State and local governments and most other applicants, Federal grant applications contain three basic parts. The first part is the standard application for Federal assistance (SF-424). The second part is the budget information form: SF-424A is to be used for non-construction programs and SF-424C is to be used for construction programs. The third part is the statement of assurances: For non-construction programs, SF-424B is used, whereas applications for construction funds should include SF-424D. **The application forms are required whether an agreement is competitive or noncompetitive.**

2. Written Determination

a. As prescribed by RM ACM 01-01, subparagraph 4.A, no grant will be made or cooperative agreement entered into until a signed and dated written determination has been made that such is the appropriate business instrument for that particular transaction. The determination will also be made prior to issuing modifications that result in expansion of the work outside the scope of the agreement.

b. The determination will cite the specific program under which there is authority to enter into the proposed agreement. The determination will contain sufficient information to document that the principal purpose of the agreement is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation, rather than of acquiring property or services for the direct benefit or use of the Federal Government. It will also contain complete information on the nature of the relationship between Reclamation and the recipient to justify the use of either a cooperative agreement (substantial involvement by Reclamation) or a grant (no substantial involvement anticipated).

c. The written determination required by subparagraph IV.C.2.a above will be made by a Level IV contracting officer at the contracting office servicing the requiring office, whether or not the contracting office issues grants or cooperative agreements. In situations where there is no such individual, the determination will be made by the Manager, Acquisition and Assistance Management Services (code D-7800).

3. Numbering System

In accordance with RM ACM 01-01, subparagraph 4.B, all grants and cooperative agreements and all modifications thereto, will be numbered in accordance with the uniform business instrument numbering system prescribed by RARS WBR 1404.8111. However, the Bureau code (1425) will be omitted for reporting purposes, since that is included elsewhere in the DI-1961.

| The seventh and eighth positions of the 15-digit number will be:

4. Competition Requirement

a. In accordance with 505 DM 2.11, and RM ACM 01-01, subparagraph 4.C, and the intent of the Grants and Cooperative Agreements Act, award of all grants and cooperative agreements will be made on a competitive basis unless the award falls within one of the following exceptions:

(i) Awards which are statutorily mandated or based on a statutory formula (by definition, "non-discretionary");

(ii) Awards made for \$25,000 or less (Refer to paragraph IV.C.31(6), Simplified Procedures for Small Agreements);

(iii) Awards made for \$100,000 or less for the continuation of a project by the initial recipient;

(iv) Awards made to satisfy a particular need or problem which cannot adequately be generalized for the purpose of competition;

(v) Awards where there is insufficient time available (due to a compelling and unusual urgency involving an emergency or a substantial danger to health or safety) for adequate competitive procedures to be followed;

(vi) Awards where it is impracticable to secure competition (e.g., when there are no other eligible recipients); or

(vii) Awards where award without competition is consistent with Federal law or Executive order (i.e., Pub.L. 93-638, the Indian Self-Determination and Education Assistance Act for titles I and IV, in accordance with 25 CFR 900; or where the existence of the assistance project must be confidential for purposes of national security, defense, or law enforcement).

b. Awards eligible under exceptions IV.C.4.a.(ii) through (iv) above may, however, be competitively awarded at the discretion of the awarding office.

5. Noncompetitive Agreements

a. In accordance with RM ACM 01-01, subparagraph 4.D, prior to issuing a noncompetitive grant or cooperative agreement under IV.C.4.a(iv) through (vii) above, a written Justification for Noncompetitive Assistance (JNCA) will be signed by the Grants and/or Cooperative Agreements Officer.

b. The contents of the JNCA will:

(i) Identify the financial assistance action;

(ii) Cite the exception to the requirement for competition (see IV.C.4.a above);

(iii) Set forth the supporting data in sufficient detail to provide the basis for the exception; and

(iv) Address whether there will be recurring or future need for this or similar assistance (and, if so, whether further actions will be processed on a competitive basis).

When processing noncompetitive actions, skip IV.C.6 and 7 below.

6. Synopsis

a. In accordance with 505 DM 2.11A, when a competitive project solicitation is prepared, a notice of its availability will be published in the Federal Register (FR) or the Commerce Business Daily (CBD), whichever appears to be most appropriate for the situation, at least 60 days prior to the application deadline. This 60-day period may vary based on program needs, but reasons for a shorter period will be documented in the file. Notice of award is not required to be published. For information on how to publish a notice in the FR, refer to procedures in 318 DM 2.4 through 318 DM 2.7. With regard to publishing a notice in the CBD, refer to Federal Acquisition Regulation (FAR) subpart 5.2.

b. Additional notices of competitive project solicitations should be published in newspapers of general circulation, or specialized periodicals, and written notice should be provided to national organizations.

7. Competitive Solicitations

a. A project solicitation will be developed and will, at a minimum, include or reference the following:

- (i) Description of the eligible activities and program priorities;
- (ii) Eligible applicants;
- (iii) The dates and amount of funds expected to be available for award;
- (iv) Information regarding required cost sharing;
- (v) Number of awards anticipated to be made;
- (vi) Evaluation criteria and weights assigned to each;
- (vii) Methods for evaluating and ranking applications;
- (viii) Submission deadline(s) and location for submission;
- (ix) Any required forms and how to obtain them;
- (x) Agency contact person;
- (xi) Applicable cost principles and administrative requirements;
- (xii) Type of funding instrument intended to be used (grant or cooperative agreement); and,
- (xiii) A statement regarding the applicability of Executive Order 12372.

b. Preapplications should be used to afford potential applicants the opportunity to assess the possibility of receiving an award and to allow Reclamation to concentrate its review processes on a reasonable number of strong applications. Preapplications will be solicited as prescribed, and evaluated on a competitive basis when they are required as an initial step by OMB Circular A-102 or deemed appropriate by the initiating program office.

c. Applications will be solicited in accordance with IV.C.1 above.

d. The evaluation criteria (IV.C.7.(vi) above) will be set forth as specifically as possible. These may include the applicant's capabilities, related experience, facilities, key personnel, techniques, cost realism, and other areas necessary to achieve the proposal objectives.

List all the evaluation criteria that will be used to evaluate applications. These criteria do not need specific numerical weights, but the relative importance should be provided, i.e., of equal importance or listed in descending order of importance.

e. An evaluation committee will be appointed by the Grants and Cooperative Agreements Officer. The committee must be technically qualified to evaluate and rate the applications, and is responsible for:

(i) Scoring applications/proposals on the basis of the stated evaluation criteria (may include technical, cost and/or management criteria).

(ii) Ranking the applications.

(iii) Recommending the application(s) for award.

f. Refer to IV.C.10 with regard to conducting a business evaluation, and other requirements of this Handbook which are necessary prior to award.

g. Award will be made to the responsible applicant(s) determined to have best met the evaluation criteria based on the highest score(s) or that would be most advantageous to Reclamation considering cost (if a factor) and the other criteria listed.

h. Each unsuccessful applicant should be informed in writing within 30 days of award that it did not receive an award. Any unsuccessful applicant, upon request, should be informed in writing as to the reasons why it did not receive award.

8. Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance is a Governmentwide compendium of Federal programs, projects, services, and activities which provide assistance or benefits to the American public. It contains financial and nonfinancial assistance programs administered by departments and establishments of the Federal Government.

Ongoing assistance programs or projects must be publicized in the CFDA. (See OMB Circular A-89 and 507 DM.) Programs under which Reclamation may award

specific project agreements and which are not open to competition are not publicized in the catalog.

9. Intergovernmental Review of Federal Programs

Executive Order 12372 requires Federal agencies to provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Acquisition and Assistance Management Services, D-7800, has been designated the Intergovernmental Review Coordinator (IRC) with responsibility for liaison and communication between Reclamation and the State single point of contact on all matters pertaining to intergovernmental review under this Executive Order.

Offices having programs impacted by Executive Order 12372 are responsible for fully implementing all applicable requirements of 511 DM 1-6.

10. Business Evaluation

Immediately following the technical review of an application, an evaluation shall be made by the contract or grants specialist of the applicant's business management capability and the financial aspects of the application. Business evaluations normally focus on budget analysis and the applicant's financial strength and management capability.

The business evaluation should include:

- a. Funding authority and availability
- b. Budget analysis. Whether this review is extensive or merely an arithmetic check of the accuracy of budget figures depends on the judgment of the grants specialist. The extent of budget analysis is dependent on the amount of the grant, nature of the project, type of costs involved, and past experience with the grantee. Budget analysis can include obtaining cost breakdowns, verifying cost data, evaluating specific elements of cost, and examining data to determine the necessity, reasonableness and allocability of costs in the budget and their allowability under applicable cost principles. As a minimum, the analysis should determine the realism of the applicant's proposed budget in relation to its technical proposal, and the indirect cost rate should be verified with the cognizant audit agency, or the recipient's method of computing this rate should be analyzed.

In addition to budget analysis, the agency may survey a prospective recipient's business management systems. Elements considered in evaluating an applicant's financial strength and management capability include: organization, past performance, required facilities, cost controls, accounting policies and procedures, procurement procedures, personnel practices, and procedures for selecting and monitoring subgrantees, if applicable.

11. Responsibility Determination

Award will be made only to responsible applicants who:

a. Are not currently listed on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (Information regarding updates to the monthly List of Parties Excluded from Federal Procurement and Nonprocurement Programs may be obtained through use of the General Services Administration's Excluded Parties List (EPL);

b. Have the ability to obtain adequate financial resources to meet non-Federal share requirements, and who possess the necessary experience, organization, technical qualifications, and facilities;

c. Have the ability to comply with the project schedule; do not have a record of poor integrity, judgment, or performance, including performance on other contract or assistance awards from any Federal agency;

d. Are otherwise qualified and eligible to receive an assistance award under applicable laws and regulations.

In accordance with OMB Circular A-129 (Managing Federal Credit Programs), credit reports should be obtained for first time or high-risk nonprofit and commercial organizations prior to awarding an agreement. For the purposes of this requirement, a "first-time" organization is one that has not received an award from Reclamation within the last 2 fiscal years. This policy does not apply to State and local governments, Indian tribes, hospitals, institutions of higher education, or individuals.

Responsibility determinations are not required prior to awarding grants or cooperative agreements to States or local governments. However, offices should comply with part 12 of the Grants Management Common Rule when a grantee or subgrantee is considered "high risk."

The information with regard to the responsibility determination may be included as part of the business evaluation.

12. Format

Pursuant to 505 DM 2.10, Contents of a Grant Agreement or Cooperative Agreement, the agreement will include Reclamation Form 7-2277 (face sheet), a schedule, special provisions, and general provisions.

a. The agreement schedule shall include the following:

(i) Background for the agreement;

(ii) Purpose (The basis for the endeavor is founded on support or stimulation of a public purpose authorized by Federal statute.);

(iii) Objective (The agreement is in fact an undertaking of a clearly defined objective.);

(iv) Benefits to be derived from performance of the project. Demonstrate that the activity to be undertaken is of a public benefit and is in furtherance of Reclamation's mission;

(v) Identification of the respective role, responsibility, obligation and accountability which each participant to the agreement will

assume in this effort (for cooperative agreements, an explicit statement of the nature, character, and extent of anticipated Reclamation involvement); and

(vi) How the project and performance will be measured to evaluate the meeting and/or achievement of specific milestones, or agreed objectives; and

(vii) Estimated amount for each budget period and the dates of the budget periods.

b. The special provisions may include the following:

(i) Performance schedule;

(ii) Property and equipment to be furnished by the Government;

(iii) Reporting requirements;

(iv) Reimbursable costs and limitations;

(v) Date of incurrence of cost (covering any preaward costs which are agreed to be payable under the agreement) (See clause "Date of Incurrence of Cost");

(vi) Payment clause;

(vii) Appointment of Grants and Cooperative Agreements Officer's Technical Representative; and

(viii) Any other special provisions necessary to promote attainment of the objectives of the agreement.

c. General provisions and OMB Circulars to be incorporated in all awards.

13. Term of Agreement

Include effective and ending dates or anticipated duration of the agreement. All agreements should be written for the minimum time required to meet the objectives of the agreement. Agreements should not exceed 5 years, at which time they should be reviewed to determine whether they should be renewed. Agreements will automatically expire at the end of the specified term, unless formally extended prior to the expiration date.

If, at the end of 5 years, continuation of the work under the agreement is determined to be necessary for an indefinite period of time, a new agreement should be considered. If the agreement is extended by modification, any new requirements, such as certifications, should be incorporated to ensure the agreement is in compliance with current regulations. If initially an agreement must be for longer than a 5-year period, the agreement file should be documented to justify the longer term.

14. Independent Review

a. In accordance with RM ACM 01-01, paragraph E, an independent review will be performed prior to issuance or execution, as applicable, of the

following types of financial assistance actions:

- (i) Competitive solicitations;
- (ii) Awards;
- (iii) Modifications, (except those issued strictly for the purpose of obligating or deobligating funds); and
- (iv) Termination and suspension notices.

b. Individual offices will determine the dollar level at which these actions are reviewed, and may extend the requirements for independent review to other areas.

c. The procedures described in RARS WBR 1401.7182 (adapted as necessary for financial assistance), including use of Reclamation form 7-2115, will be followed.

15. Legal Review

As prescribed by RM ACM 01-01, paragraph F, legal review will be obtained for proposed grants and cooperative agreements prior to issuance of all solicitations, awards, and modifications thereto, under the following circumstances:

a. When the estimated value to be provided thereunder exceeds \$300,000 (including all options).

b. When advice is needed to make the determination required by IV.C.2.a above (especially when there is disagreement with the requiring office as to the appropriate business instrument to be used).

Grants and Cooperative Agreements Officers are encouraged to seek the advice of the cognizant Regional or Field Solicitor on other legal matters as considered beneficial.

16. Approvals

The following approvals are required, in accordance with RM ACM 01-01, paragraph G:

a. The written approval of the chief of the contracting office (see RARS WBR 1402.1 for definition) will be obtained prior to the award or issuance of all noncompetitive financial assistance actions over \$100,000 (including all option amounts), except those meeting exception IV.C.4.a.(i) above. (Where approval by the Manager, Acquisition and Assistance Management Services also is required (see IV.C.16.b. below), the approvals will be cumulative.)

b. The written approval of the Manager, Acquisition and Assistance Management Services will be obtained prior to the award of all noncompetitive financial assistance actions over \$500,000 (including all option amounts), except those meeting the requirements of IV.C.4.a.(i) above.

c. Submissions of requests for approval of proposed financial assistance actions will be forwarded to the Manager, Acquisition and Assistance Management Services, Attention: Code D-7800, as soon as possible, but in any event in sufficient time to allow at least 5 working days after receipt, for review and approval. The request will contain at least the following information:

- (i) Justification for Noncompetitive Assistance;
- (ii) Determination of Appropriate Business Instrument;
- (iii) Business Evaluation;
- (iv) Proposed award document, or modification;
- (v) Independent Review; and
- (vi) Sufficient additional information and analysis to permit a meaningful review.

When time is of the essence, all available information may be submitted early (electronically, if possible) and missing data submitted as a supplement when available.

17. Reporting Requirements

All Federal financial assistance actions which involve funding will be reported quarterly under the Federal Assistance Award Data System (FAADS), as follows:

- a. Instructions for the preparation of the quarterly FAADS report are published through the Bureau of the Census;
- b. Each assistance action will be reported on Department of the Interior Form DI-1961, "Federal Assistance Award Data System Reporting Form;"
- c. Each FAADS report (DI-1961) will include the applicable pseudo code;
- d. All DI-1961's will be transmitted electronically to Acquisition and Assistance Management Services, Attention: Code D-7800, on the first working day after the end of each quarter.

18. Certifications

Certifications in accordance with the below requirements will be obtained prior to award of financial assistance agreements. Form DI-2010, Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying may be used for these certifications. The certification language in the form reflects the required language and should not be modified.

- a. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Executive Order 12549, (as implemented by 43 CFR Part 12), requires that an agency not allow a party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise

excluded that party from participation in a procurement or nonprocurement activity.

In addition to its certification, each recipient will have to require subrecipients or subcontractors in lower tier transactions to include the certification for lower tier covered transactions for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

b. Certification Regarding Drug-Free Workplace Requirements - The common rule for implementation of the Drug-Free Workplace Act of 1988 for assistance transactions was adopted by Department of the Interior at 43 CFR Part 12. This statute requires that all recipients receiving grants from or entering into cooperative agreements with any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a recipient who is an individual, certify to the agency that his or her conduct of grant activity will be drug free. This Governmentwide rule is for the purpose of implementing the statutory requirements. It directs that recipients take steps to provide a drug-free workplace in accordance with the Act.

In addition, after October 1, 1990, except as provided in Section 86.6, paragraph (b) of 34 CFR Part 86, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA) is not eligible to receive funds or any other form of financial assistance under any Federal program until it has submitted a drug prevention program certification. The Department of Education will submit the list of IHE's, SEA's, and LEA's which they have determined to be ineligible for Federal procurement and nonprocurement funds, based upon their failure to submit a certification of adoption and implementation of a drug prevention program, to the General Services Administration for inclusion in the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs. If the organization is not listed, the assumption will be made that the applicant has submitted such certification to the Department of Education. (Refer to IV.C.11.a above.)

c. Certification Regarding Lobbying - Section 319 of Public Law 101-121 (Act) prohibits the use of appropriated funds to influence or attempt to influence Congress or a Federal agency in connection with the award of a grant or cooperative agreement. Nonappropriated funds used for lobbying are required to be disclosed using Standard Form LLL, "Disclosure of Lobbying Activities."

Effective on or after December 23, 1989, each recipient is required to provide a certification, and a disclosure, if applicable (on Form LLL), prior to award, extension, renewal, amendment, or modification of a grant or cooperative agreement exceeding \$100,000.

Recipients will be required to include the language of the "Certification Regarding Lobbying" in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and all subrecipients shall certify accordingly, using Form DI-2010 or DI-1954.

Copies of any disclosure forms (Form LLL) received shall be transmitted to the Manager, Acquisition and Assistance Management Services, Attention: Code D-7800 within 15 days following quarters ending March 31, and September 30.

Indian tribes, tribal organizations, or any other Indian organizations with respect to the expenditures specifically permitted by other Federal law are excluded from the application of this Act. However, subcontracts or subgrants awarded by tribes may be subject to the requirement, depending on whether the subcontractor or subgrantee is Indian.

19. Payments

Payments under an assistance agreement may be made either in advance or by reimbursement (after disbursement by the grantee). Reclamation's authority to make advance payments under financial assistance actions is contained in OMB Circular(s) A-102 and A-110. The method of advancing funds by Treasury check or wire transfer may be used, in accordance with the provisions of Treasury Circular No. 1075, when the recipient meets the following requirements:

a. If the recipient has established or demonstrated the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient.

b. If the recipient's financial management system meets the standards for fund control and accountability prescribed in Subpart 2.b. of OMB Circular A-102 or Subpart C.21 of OMB Circular A-110, "Standards for Financial Management Systems."

The reimbursement by Treasury check or wire transfer method shall be the preferred method if the recipient does not meet the requirements specified above. This method may also be used on construction agreements, or if the major portion of the program is accomplished through private market financing or Federal loans, and the financial assistance action is a minor portion of the program.

31 CFR 205 implements the Cash Management Improvement Act of 1990, Pub.L. 101-453, and prescribes rules and procedures for the transfer of funds between the Federal Government and States.

In accordance with the Debt Collection Improvement Act of 1996, beginning on July 26, 1996, all new Federal payment recipients will receive their funds by electronic funds transfer (EFT). By January 1, 1999, all Federal payments will be made by EFT. It is also necessary to include taxpayer identification numbers (TINS) with all payment requests.

20. Audit Requirements

a. Audit requirements for State and local governments are prescribed by the Single Audit Act of 1984 as implemented by OMB Circular A-128. Requirements for audits of institutions of higher education and other nonprofit organizations are contained in OMB Circular A-133.

b. A single audit shall be made of grantee organizations that receive \$100,000 or more per year in Federal financial assistance. Grantee organizations that receive between \$25,000 and \$100,000 a year shall have an audit made in accordance with the Circulars, or in accordance with Federal laws and regulations governing the programs they participate in. Compliance Supplements which set forth the major compliance requirements that should be

considered by independent auditors in making audits of grantee organizations may be purchased from the Government Printing Office.

c. Federal agencies which have been designated as cognizant agencies by the Office of Management and Budget are responsible for cost negotiation and audit of grantee organizations and are listed in the Federal Register publication Vol. 51, No. 3, dated January 6, 1986, page 551, et seq. When recipient organizations have not been assigned a cognizant agency by OMB, they are under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly. In instances where Reclamation determines that it provides the most funding to an organization, it must comply with oversight (cognizant) responsibilities set forth in OMB Circulars A-128 or A-133. Also, audit reports must be submitted to the Office of Inspector General to be reviewed for conformance with prescribed reporting requirements, as required by Departmental Manual 360 DM 4.2C.

d. Reclamation may initiate any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication with an audit made in accordance with the applicable OMB Circular, and it shall be the responsibility of the office that requests such additional audit to arrange for funding the cost of same.

21. Minority Business Enterprise Development

a. The notice prescribed by 505 DM 3.5C will be included in grants and cooperative agreements which afford opportunities for purchases from the business community to reflect the Department's implementation and support of Executive Order 12432, July 14, 1983, Minority Business Enterprise Development (See clause "Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms").

b. Recipients of grants and cooperative agreements should be encouraged to report any awards in excess of \$10,000 made to minority or woman-owned businesses so this information may be included on the Minority Business Development Agency form MBDA-91, which will be submitted to the Manager, Acquisition and Assistance Management Services, code D-7800, within 10 days after the end of each fiscal year quarter.

22. Property

Property which is furnished by Reclamation or which is purchased or fabricated and charged to the project by the recipient will be managed in accordance with OMB Circulars A-102 or A-110, as applicable, and pertinent FPMR Supplements to the Reclamation Manual.

Any Government property to be furnished under a grant or cooperative agreement will be coordinated with regional property offices. Agreements will include a listing of Government-furnished property, identified by property numbers. An inventory listing of Government-furnished property will be obtained annually from the recipient.

Upon completion of the agreement or when the property is no longer needed, the recipient will report the property to the Government. The Government will issue

disposition instructions within 120 calendar days after the end of the agreement.

23. Modifications to Agreements

Modifications will be issued using Reclamation Form 7-2278. Modifications resulting in additional funding or other changes effecting the application submitted by the recipient under IV.C.1 above will require the recipient to submit revised pages. Previously submitted pages with information that is still current need not be resubmitted.

24. Resolving Disagreements

Any disagreements between Reclamation and the recipient will be resolved in accordance with the clause, "Resolving Disagreements." This clause should be placed in all agreements, other than those where a different clause has been specified by the Office of the Solicitor.

25. Nondiscrimination on the Basis of Handicap

The regulation issued by the Department at 43 CFR 17, subpart B, for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. Grants and cooperative agreements involving new construction, addition or alteration will require work to be accomplished in accordance with the Minimum Guidelines and Requirements for Accessible Design issued by the Architectural and Transportation Barriers Compliance Board.

26. Metric Transition Program

The Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100-418, Section 5164) amended the Metric Conversion Act and assigned a leadership role in metrication to the Federal Government. The 1988 amendments are mandatory and designated the metric system of measurement as the preferred system of weights and measures for United States trade and commerce.

Federal agencies are required to use the metric system of measurement in its grants and cooperative agreements, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms. Anyone needing help with regard to metrication should contact their local Metric Coordinator.

27. Stevens Amendment

Section 623 of the Treasury, Postal Service, and General Government Appropriations Act, 1993, and reenacted in Section 621 of the fiscal year 1994 Appropriations Act requires that all recipients disclose the amount and percentage of Federal funding and funding from nongovernmental sources when making public announcements about Federally-funded projects. In order to comply with this requirement, the provision entitled "Stevens Amendment" will be inserted in financial assistance agreements of \$500,000 or more which are subject to OMB Circular A-110. This requirement is covered by the latest revision of Circular A-102.

28. Endorsement of Commercial Products or Services

In accordance with the amendment of Section 12.2 of 43 CFR Part 12, as published in the Federal Register on April 14, 1994, employees are prohibited from endorsing in an official capacity the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes.

In this regard, the provision "Endorsement of Commercial Products or Services," will be inserted in all financial assistance agreements of \$25,000 or more, other than those awarded to State or local governments, or federally-recognized Indian tribal governments.

29. Buy American Act

Buy American Requirements for Assistance Programs, Final Rule was published in the Federal Register on July 19, 1994. This final rule was in response to sections 502 and 503 of Pub.L. 103-126 (107 Stat. 1379), which extended the Buy American Act requirements to awards of financial assistance, and applied to procurement contracts under grants and cooperative agreements.

Section 505 of Pub.L. 104-46 (109 Stat. 419), as implemented by 43 CFR 12.710, changed the requirements for agreements awarded by Reclamation to indicate that it is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in that Act should be American made. In this regard, the notice at 43 CFR 12.710(c) should be provided to recipients at the time of award.

30. Closeout

Prior to the expiration date of a grant or cooperative agreement, a letter should be sent to the recipient notifying it of final reports that will be due, the dates by which they must be received, and where they must be submitted.

Actions that must precede closeout are:

- a. Receipt of all required reports;
- b. Disposition or recovery of Government-furnished property;
- c. Receipt of latest audit report, if applicable; and
- d. Adjustment of the award amount.

31. Simplified Procedures for Small Agreements

For financial assistance actions not exceeding \$100,000, the following procedures may be used:

- a. Request program codes to provide with their request for financial assistance actions information necessary for preparation of a memorandum to

document the action. The documentation memorandum will include the following sections:

- (1) Background/Purpose/Objective/Benefit

(2) Authority - Cite the public law authorizing the action (See Section III.B. above.

(3) Description of the Effort - A statement of what is to be accomplished.

(4) Amount and Term of Agreement

(5) Determination of the Appropriate Business Instrument - Document how the proposed agreement is for support or stimulation of a public purpose, and the extent of involvement by Reclamation.

(6) Justification for Noncompetitive Assistance - For agreements between \$25,000 and \$100,000, cite the exception to competition and provide supporting documentation (see IV.C.4 above).

(7) Business Evaluation - Attach a copy of recipient's proposed budget, if available. Include adequate budget analysis as prescribed by IV.C.10 above to be able to determine the amount to be reasonable for the benefit to be derived. Also, if applicable, document that the List of Parties Excluded from Federal Procurement and Nonprocurement Programs has been checked.

(8) Statement of technical review - a statement that the overall project has been reviewed by the program code to assure that it is a viable project and can be reasonably expected to accomplish the intended purpose.

The documentation memorandum will be signed by the Grants and/or Cooperative Agreements Officer. Memorandums prepared for agreements between \$25,000 and \$100,000 will also be signed by a level IV contracting officer.

b. The financial assistance instrument will be issued on Reclamation Form 7-2277(S).

c. For agreements not exceeding \$25,000, payments will be made in advance of project completion. Agreements will remain open only until project completion can be determined.

d. Agreement close-out will be based upon the program code's assurance that the project has been completed, as well as any other action that may be applicable from IV.C.30 above.

32. Cooperative Research and Development Agreements Under the Federal Technology Transfer Act of 1986 (Pub.L. 99-502)

This Act authorizes Reclamation laboratories to enter into Cooperative Research and Development Agreements with other Federal agencies, units of State or local government, and other organizations set forth in the Act (Sect.12(a)(1)). Guidance for entering into such agreements is contained in the Handbook on Issuance of Cooperative Research and Development Agreements Under the Federal Technology Transfer Act of 1986. Copies of this handbook are available from Acquisition and Assistance Management Services, D-7800.

33. Forms

The following forms, as mentioned in the above text, are available upon request from Acquisition and Assistance Management Services, D-7800:

- a. 7-2277 - Assistance Agreements
- b. 7-2278 - Modification of Assistance Agreement
- c. 7-2277(S) - Small Grant Assistance Agreement
- d. SF 424 - Application for Federal Assistance
- e. SF 424A - Budget Information - Non-Construction Programs
- f. SF 424B - Assurances - Non-Construction Programs
- g. SF 424C - Budget Information - Construction Programs
- h. SF 424D - Assurances - Construction Programs
- i. DI-2010 - Certifications Regarding Debarment, Suspension, and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying
- j. DI-1954 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
- k. SF-LLL - Disclosure of Lobbying Activities
- l. DI-1961 - Federal Assistance Award Data System Reporting Form
- m. MBDA-91 - Minority Business Development Agency Form

34. Clauses and Provisions

The following clauses and provisions, as mentioned in the above text, are available upon request from Acquisition and Assistance Management Services, D-7800:

- a. Budget
- b. Date of Incurrence of Costs
- c. Endorsement of Commercial Products or Services
- d. General Provisions (which include the following)
 - (1) Policy
 - (2) Officials Not to Benefit
 - (3) Covenant Against Contingent Fees
 - (4) Equal Opportunity
 - (5) Disabled Veterans and Veterans of the Vietnam Era
 - (6) Employment of the Handicapped
 - (7) Clean Air and Water
 - (8) Convict Labor
 - (9) Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms
 - (10) Stevens Amendment
 - (11) Notice Regarding Buy American Act
 - (12) Resolving Disagreements
 - (13) Forms and Certifications

Glossary of Terms

-A-

Applicant: An organization or individual which submits an application for assistance.

Assistance: The transfer of anything of value for a public purpose of support or stimulation authorized by Federal law. It includes financial assistance; Federal Government facilities, services, and property; and expert and technical information (other than conventional public information service).

Assistance agreements: A grant or cooperative agreement which reflects the relationships prescribed by the Grant and Cooperative Agreement Act of 1977.

-B-

Budget period: An interval of time, specified in the award, into which a project is divided for budgeting and funding purposes.

-C-

Cooperative agreement: The legal instrument used to reflect a relationship between the Federal Government and a State or local Government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to a State or local Government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal law; and substantial involvement is anticipated between the Federal Government, and the State or local government, or other recipient during performance of the contemplated activity.

Cost-Sharing: Contribution by the recipient toward the total cost of conducting the project. The cost-sharing portion of a project represents that portion of the project costs not borne by the Federal Government.

-D-

Direct benefit or use: A product or service bought for the immediate advantage or use of the Government. This product or service may support the day-to-day operation of the Government; a recognized objective or mission of the Government; or promote the welfare of the general community in situations where the Federal Government has primary responsibility. The question of which party directly benefits from the relationship is determined solely by the Federal purpose in the relationship and not by the degree to which the Federal Government benefits more than another party (including a third party). Under the criteria, the recipient of a cooperative agreement may benefit more or less than the Federal Government. Likewise, the Federal Government "directly benefits," even though it receives little or no apparent benefit from buying from one party in order to provide legislated assistance to another.

Discretionary award : An award under authority of a Federal statute that permits Reclamation to exercise judgment in selecting the recipient and the project to be supported, and in determining the amount of the award.

-E-

Equipment : Tangible nonexpendable personal property having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit. However, Recipient's policy may establish lower limits.

Excess property : Property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibility.

Executive Order 12372, "Intergovernmental Review of Federal Programs" : Executive Order 12372 is intended to establish a procedure to be used by state and local governments that are involved in the evaluation, review, and coordination of Federal and Federally-assisted programs and projects before they are approved.

Expendable personal property : All tangible personal property other than nonexpendable property.

-G-

Grant : The legal instrument used to reflect a relationship between the Federal government and a State or local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local Government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government or other recipient during performance of the contemplated activity. The Federal Government will not be substantially involved.

Grants and Cooperative Agreements Officer : An official designated to enter into or administer agreements and make related determinations and findings.

Grants and Cooperative Agreements Officer's Technical Representative : The Reclamation individual responsible for technical monitoring of the agreement.

-I-

In-kind Match : A recipient's fulfilling of its cost-sharing obligation by a contribution other than cash, such as the rental of space, or equipment, or the provision of staff services.

-L-

Local government : A unit of government in a State, a local public authority, a special district, interstate district, a council of governments, a sponsor group

representative organization, an interstate entity, or another instrumentality of a local government.

-N-

Nonexpendable personal property : Tangible personal property having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit. A recipient may use its own definition of nonexpendable personal property, provided that such definition would at least include all tangible personal property as defined above.

-P-

Personal property : Personal property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

Project Manager/Principal Investigator : The person authorized and designated by the recipient to serve as the recipient's principal contact with Reclamation.

Public support or stimulation : Assistance provided by Government (Federal or State), rather than through private interests, and which promotes the general welfare, security, prosperity, economic benefit, or a public convenience or need. The assistance must benefit the community, although all of the community does not have to benefit (i.e., an aggregate or group). The community may be a local, State, or national entity or group.

-R-

Real property : Land, including land improvements, structures, and appurtenances thereto, and excluding movable machinery and equipment.

Recipient : The party who has accepted award of an agreement. The recipient may be a State, local government, federally recognized Indian tribal government, nonprofit organization, institution of higher education, hospital, for-profit organization, or individual.

-S-

Solicitation : A document which requests the submission of applications for financial assistance and which describes program objectives, recipient and project eligibility requirements, desired performance activity, evaluation criteria, award terms and conditions, and other relevant information about the financial assistance opportunity.

Substantial involvement : Substantial involvement is used as the criteria for distinguishing between use of a grant or cooperative agreement. Substantial involvement occurs when the terms of the instrument indicate that the recipient can expect Federal agency collaboration or participation in the management of the project, i.e., when:

1. Federal and recipient's officials work closely together, and;
2. Federal officials need to closely oversee a recipient's activities to ensure that the program or project objectives are achieved. Since the term is a relative rather than an absolute concept, the following guidelines are to assist in selecting the proper assistance instrument. Substantial involvement may be construed to include one or more of the following situations:
 - a. When the agreement indicates that the recipient can expect Reclamation collaboration or participation in the management of the project.
 - b. When Reclamation has the power to immediately halt an activity if project specifications are not met.
 - c. When Reclamation must review and approve one stage of the work before work on a subsequent stage can begin.
 - d. When Reclamation has review and approval authority of substantive provisions in the selection or award of subagreements, grants, or contracts awarded under the assistance agreement.
 - e. When Reclamation has an active involvement in the selection of key recipient and subrecipient personnel.
 - f. When Reclamation is required to monitor the activity of the recipient to permit specified kinds of direction or redirection of the work to ensure desired interrelationships with other Federal projects.
 - g. When substantial, direct Reclamation operational involvement or participation during the activity is anticipated to ensure compliance with appropriate statutory requirements.
 - h. When Reclamation involvement and assistance is necessary, due to the complexity or novelty of the project.
 - i. When the capacity of the recipient to implement without Reclamation direction is in doubt.

Conversely, substantial involvement during performance would not include the following which can normally be expected during the term of an agreement:

1. Reclamation approval of a recipient's plans prior to award (as opposed to during the term of the agreement).
2. Normal exercise of Federal responsibilities during the project such as site visits, performance reporting, financial reporting, and audit to ensure that the objectives, terms and conditions of the award are accomplished.
3. Unanticipated Reclamation involvement to correct deficiencies in project or financial management of an assisted project.
4. Enforcement of appropriate statutory requirements understood in advance of the award.
5. Reclamation review of recipient's performance after project completion.

6. Enforcement of recipient's compliance with general administrative requirements, such as those set forth in OMB circulars.

7. The normal practice of providing technical assistance, advice, or guidance to recipients, if:

a. It is provided at the request of the recipient;

b. The recipient is not required to follow it; or

c. The recipient is required to follow it, but it is provided prior to the start of the assisted activity and the recipient understood this requirement prior to receipt of the financial assistance award.

Reclamation will normally limit Federal involvement in assisted activities to a minimum level that is consistent with program requirements. In some instances, it may become necessary to convert a grant to a cooperative agreement or vice versa if programming considerations dictate more or less involvement during the period covered by the agreement or grant. See 505 DM for further guidance.

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Technical Representative : The Reclamation individual responsible for technical monitoring of the agreement. Also known as the Grants and Cooperative Agreements Officer's Technical Representative.